

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
ANDREA L.C. ROBIDOUX
CHOATE, HALL & STEWART LLP
53 STATE STREET
BOSTON, MA 02109

PCT
REC'D 13 JUN 2005

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference 2005577-0004		Date of mailing (day/month/year) 09 JUN 2005 FOR FURTHER ACTION See paragraph 2 below	
International application No. PCT/US05/08417	International filing date (day/month/year) 14 March 2005 (14.03.2005)	Priority date (day/month/year) 19 March 2004 (19.03.2004)	
International Patent Classification (IPC) or both national classification and IPC IPC(T): A61K 35/78 and US Cl.: 424/195.15, 728, 735, 756			
Applicant LI, XIU-MIN			

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.
For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US
Mail Stop PCT, Attn: ISA/US
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450
Facsimile No. (703) 305-3230

Authorized officer

Susan D. Coe

Telephone No. (571) 272-1600

Valerie Bell-Harris
for

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/08417

Box No. I Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

☐ This opinion has been established on the basis of a translation from the original language into the following language _____ which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(h)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

☐ a sequence listing

☐ table(s) related to the sequence listing

b. format of material

☐ in written format

☐ in computer readable form

c. time of filing/furnishing

☐ contained in international application as filed.

☐ filed together with the international application in computer readable form.

☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International applicatic
PCT/US05/08417

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>1-15</u>	YES
	Claims <u>NONE</u>	NO
Inventive step (IS)	Claims <u>NONE</u>	YES
	Claims <u>1-15</u>	NO
Industrial applicability (IA)	Claims <u>1-15</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1-15 lack an inventive step under PCT Article 33(3) as being obvious over US Pat. No. 6,630,176. This patent teaches a method for treating and preventing allergic reactions. The method uses a composition that can contain one or more of Ling Zhi, Wu Mei, Chaun Jiao, Huang Lian, Huang Bai, Gan Jiang, Gui Zhi, Ren Shen, and Dong gui (see column 3, lines 30-55). The reference does teach that the composition can contain other herbal ingredients. However, since the reference does not require the use of these other ingredients, a composition the same as claimed is encompassed by the reference. A person of skill in the art would be motivated to pick amongst the ingredients in the reference in order to best achieve the desired effects of the reference. The reference also teaches that the composition can be used in conjunction with other anti-allergy substances such as anti-histamines and steroids. The composition also contain pharmaceutically acceptable carriers.

Claims 1-15 meet the criteria set out in PCT Article 33(4), and thus claims 1-15 have industrial applicability because the subject matter claimed can be made or used in industry.

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To:
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(day/month/year) **09 JUN 2005**

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FOR FURTHER ACTION

See paragraph 2 below

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Telephone No. (571) 272-1600

Valerie Bell-Harris
for

Form PCT/ISA/237 (cover sheet) (January 2004)

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US05/08417

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Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)

Claims 1-15 YES

Claims NONE NO

Inventive step (IS)

Claims NONE YES

Claims 1-15 NO

Industrial applicability (IA)

Claims 1-15 YES

Claims NONE NO

2. Citations and explanations:

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